IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.811 OF 2003

Thomson Thomas David. ..Appellant.

V/s.

The State of Maharashtra. ..Respondent.

Smt.Anjali Patil for Appellant.

Shri K.V.Saste, APP for Respondent.

CORAM: A.M.KHANWILKAR,J

DATE : AUGUST 17, 2006.

ORAL JUDGMENT :

1. This appeal takes exception to the Judgment and Order passed by the Additional Sessions Judge for Greater Bombay dated March 28, 2003 in Sessions Case No.787 of 1993. The operative order passed by the trial Court while deciding the said case reads thus:

"ORDER

1. Accused No.2 Thomsan Thomas David, is hereby convicted of the offence punishable under Sec. 307 r/w 34 of IPC, and sentenced to suffer rigorous imprisonment for the period of four years and to pay a fine of Rs.500/-(Rs.five hundred only), in default to suffer further R.I. for the period of four months.

2. Accused no.2 is also convicted under Sec.353 r/w 34 of IPC, and sentenced to suffer R.I. for the period of one year and to pay fine of Rs.200/- (Rs.two hundred only), in default to suffer further R.I. for the period of two months.

3. Accused no.2 is acquitted of the charge under Sec. 3 r/w 27 of the Arms Act.

4. Both the substantive sentences shall run concurrently.

5. Art.1(Pistol), Art.2 Colly.(Two live cartridges), Art.3 colly, (Two empty Cartridges) and Art.4 (empty case of used round and lead) are confiscated to the State Government after the appeal period or appeal, if any, is over.

2. The counsel for the appellant has brought to my notice that the appellant was in custody since 28th February, 2002. It is also pointed out that the appellant was directed to be released on bail in terms of order dated 11th July, 2003. Office note indicates that the appellant is still in jail. Counsel for the appellant fairly points out that the appellant has availed the bail on 9th September, 2005. Taking the statement made by the counsel for the appellant as it is, as the same is not disputed by the learned APP, it is seen that the appellant has already undergone substantial part of the sentence as he was in jail since 28th February, 2002 and has been released on bail in the present case only on 9th September, 2005. Maximum punishment awarded by the lower Court in the impugned order is for a period of four years and to pay fine of Rs.500/- i.d. to suffer further R.I. for a period of four months in

relation to the offence under section 307 r/w 34 of the I.P.Code. With regard to the offence punishable under section 353 r/w 34 of the I.P.Code, the appellant has been sentenced to suffer R.I. for a period of one year and to pay fine of Rs.200/- i.d. to suffer further R.I. for a period of 2 months. The trial Court has also ordered that substantive sentences shall run concurrently. Thus understood, there is hardly any sentence which remains to be undergone by the appellant in terms of the impugned Judgment and Order. The Counsel for the appellant therefore, submits that this appeal be disposed of by modifying the order of sentence awarded by the Trial Court to the sentence already undergone by the appellant. I am inclined to accept this request as the appellant was in custody for almost three and half years i.e. from 28th February, 2002 till 9th September, 2005. Besides, the Appellant must have earned some remission period. Accordingly, this appeal is partly allowed by reducing quantum of sentence to the sentence already undergone by the appellant. Accordingly, the impugned Judgment and order is modified by reducing quantum of sentence, inspite of appellant has been found guilty, to the sentence already undergone by the appellant.

3. Appeal succeeds on the above terms. Bail bond stands cancelled.